IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.12.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.817 of 2003

Allahabad Bank
Pondicherry Branch
having office presently at
Kamarajar Salai
Pondicherry
Rep. by its Branch manager .. Petitioner/Appellant/Respondent

vs.

Malathi Balasubramanian .. Respondent/Respondent/Petitioner

Revision Petition filed against the order dated 7.11.2001, made in R.C.A.No.2/2000 on the file of the Rent Control Appellate Authority, Pondicherry (Principal District Court, Pondicherry), confirming the order dated 22.9.1998 in H.R.C.O.P.No.32/1994, on the file of the Rent Controller, Pondicherry.

For Petitioner : Mr.P.Sukumar
For Respondent : M/s.Sai, Bharath and Ilan

ORDER:

This Revision Petition has been filed against the order dated 7.11.2001, made in R.C.A.No.2/2000 on the file of the Rent Control Appellate Authority, Pondicherry (Principal District Court, Pondicherry), confirming the order dated 22.9.1998 in H.R.C.O.P.No.32/1994, on the file of the Rent Controller, Pondicherry.

2. The tenant has filed the above revision petition.

3. RCOP No.32/1994 was filed by the landlady against the tenant which is a nationalised bank, under Sec.5(1) of the Pondicherry Buildings (Lease & Rent Control) Act, 1969 hereinafter called 'the Act', to fix fair rent for the schedule property at the rate of Rs.7,000/- per month. The rent controller by order dated 22.9.1998 fixed the fair rent at Rs.5,675/- per month payable from the date of the petition. Aggrieved by the order of the rent controller, the tenant/bank filed RCA No.2/2000 and the appellate authority by its order dated 7.11.2001 confirmed the order of the rent

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controller by fixing fair rent at Rs.5,675/- per month. Against such concurrent findings of the authorities below fixing the fair rent at Rs.5,675/- per month, the above revision petition has been filed by the tenant/bank under Sec.25 of the Act, 1969.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent. I have also gone through the documents and the judgments referred to by them filed in support of their submissions.

5. Though a number of grounds have been raised in the revision petition, the learned counsel for the revision petitioner mainly contended that the cost of the land arrived at by both the courts below at Rs.2,80,675/- is obviously wrong. Learned counsel submitted that as there are two floors in the building, the value of the land should have been apportioned between the two floors and if so apportioned, the cost of the land should have been 50% of Rs.2,80,675/-, ie., Rs.1,40,335/- only. If the cost of the land is taken as Rs.1,40,335/-, then the fair rent should be fixed at Rs.4,272/- per month instead of Rs.5,675/- per month as wrongly fixed by the authorities below.

6. In support of his contentions, learned counsel relied on the following judgments:

1) 1968-I M.L.J. 410=(81) L.W. 196}(A.C.Charities v. M/s.S.Aushadhalaya)
2) 1972-II M.L.J. 446 (Rainbow Electric Supply Corpn. v. Chenchuramiah)
3) 1969-I M.L.J. 101 (Sivagnanam v. Everest ;Boarding and lodging)

7. Per contra, learned counsel for the respondent/landlady submitted that both the authorities below fixed the fair rent which need not be interfered with, under the revisional jurisdiction of this court.

8. In 1968-I M.L.J. 410 (81 L.W. 196) this court held that in the case of building having two floors, the market value of the land for the first floor will be half and if there are more than two storeys, it will be proportionately distributed in accordance with the number of storeys in the building.

9. 1972-II M.L.J. 446 (cited supra), this court held as follows:

> "16. The extent of the ground floor is 2207 sq. feet while in the first floor, the built up area, is 950 sq. feet. Though the building in question is partly residential and partly non-residential, the courts below have found that it is predominantly non-residential and we will have to proceed on this basis. Ramaprasada Rao, J., in S.Attendrooloo Chetty's Charities by its President and Trustee S.Venkatarangam and others v. Messrs Saddana Aushadhalaya by its proprietor Naresh Chandra Ghosh (1968)81 L.W.196, held

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that fixation of fair rent for the site value in an application under section 4 of the Madras Buildings (Lease and Rent Control) Act, 1961, in the case of buildings having more than one floor, ought to be one of apportionment in accordance with the number of storeys. The learned Judge held that if there are more than two storeys the site value has to be proportionately distributed in accordance with the number of storeys in the buildings. The question in the present case is whether there is a second storey in the building in question. The learned counsel for the tenant urges that in the second floor a structure with asbestos cement roofing is in existence and the landlord is deriving rent therefrom and the contention is that the court has to apportion the site value amongst the ground floor, first floor and the second floor. The landlord's reply to this contention is that the structure in the second floor does not belong to him. The courts below have accepted the landlords' case and held that the second floor construction should not be taken into account in arriving at the site value. I accept the finding of the appellate Judge and hold that the apportionment of the site value should be only confined only to the ground floor and the first floor."

10. In the above decision this court followed the earlier decisions reported in 1968-I M.L.J.410 (cited supra) and held that the apportionment of the site value should be in accordance with the number of storeyes.

11. In 1969-II M.L.J. 101 (cited supra), this court held that the market value of that portion of the site on which the residential building is constructed, has to be constructed in a liberal way and building in that expression is the entire building, not merely that part of the building which is within the purview of the Act.

12. In the light of the above facts and principles of law enunciated by this court, let me consider the case of the petitioner.

13. It is true that the cost of the land where the demised premises is situated is taken at Rs.250/- per sq.ft., and the entire cost of the land is arrived at Rs.2,80,675/-. On that basis, the rent controller proceeded to fix the fair rent at Rs.5,675/- per month.

14. The appellate authority, on appeal confirmed the cost of the land at Rs.2,80,675/-.

15. Learned counsel for the revision petitioner while agreeing with the cost of the land fixed at Rs.2,80,675/- for the vacant building,

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strongly objected to the inaction of the authorities below in not apportioning the cost of the land between the two floors of the building in which the petitioner is occupying only one floor namely, the ground floor and the 1st floor of the building is in occupation of the respondent/landlady for her residential purpose.

16. I find force in the submissions of the learned counsel for the revision petitioner.

17. In the light of the decisions rendered by this court referred to above, the cost of the land has to be necessarily apportioned between the two floors when the building has two floors. It is not in dispute that the building in question has two floors in which the tenant/revision petitioner is in occupation of the ground floor. In such circumstances, the cost of the land as arrived at by the authorities below at Rs.2,80,675/- ought to have apportioned and the cost of the land should have been fixed at Rs.1,40,335/- for the portion under the occupation of the tenant/revision petitioner.

18. The calculation arrived at by the authorities below for fixing the fair rent at Rs.5,675/- per month is as under:

Description	Calculation as considered by the courts below
Built up area is 1122.7 sft. Market value of the site Cost of land on which the demised building is constructed	(full extent of built up area is taken into account 1122.7 x Rs.250/- = Rs.2,80,675/-
For vacant area 50% of the cost of land over which the building is constructed Total cost of site Add cost of building(after depreciation) Total cost of site & building Annual fair rent @ 12% of the value Rent per month	2,80,675/2 = Rs.1,40,335/- ---------- Rs.4,21,010/- Rs.1,46,522/- ---------- Rs.5,67,532/- Rs.68,104/- Rs.5,675/-

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19. From the above it is very clear that the entire cost of land was taken into consideration by the authorities below without apportionment between the two floors. Even though a specific ground is taken by the revision petitioner in this regard in the appeal filed before the appellate authority, the same was not considered by the appellate authority. Therefore I am of the opinion that the cost of land for the demised premises in the ground floor should be taken as Rs.1,40,335/- and on that basis the fair rent is to be calculated as under:

Description	Calculations submitted by the petitioner for consideration by this Hon'ble court
Built up area is 1122.7 sft.	(If value of site is apportioned as per number of storeys)
Market value of the site	
cost of land on which the demised building is constructed	1122.7 x Rs.250/- = Rs.1,40,335/-
For vacant area 50% of the cost of land over which the building is constructed	2 2,80,675/2 = Rs.1,40,335/-
Total cost of site	Rs.2,80,670/-
Add cost of building (after depreciation)	Rs.1,46,522/-
Total cost of site & building	Rs.4,27,192/-
Annual Fair Rt @ 12% of the value	Rs.51,263/-
Rent per month	Rs.4,272/-

20. Therefore I am inclined to interfere with the orders of the authorities below to the extent as mentioned above and the fair rent is to be fixed at Rs.4,272/- instead of Rs.5,675/- per month as fixed by the authorities below.

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21. The Civil Revision Petition is allowed to that extent only and the same is ordered accordingly. No costs.

22. It is reported by the learned counsel for the petitioner that the tenant/bank has already vacated the premises and the excess rent fixed by the authorities below has been deposited in the court below. If so, it is for the revision petitioner to get refund if any, from the court below in which the amount is deposited on the basis of the fair rent fixed by this court.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sks

To

1. The Rent Control Appellate Authority,
(Principal District Judge)
Pondicherry.

2. The Rent Controller,
Pondicherry.

3. The Section Officer,
V.R.Section, High Court, Madras.

1 cc To M/S.Sai Bharath & Ilan, Advocate, SR.61955.
1 cc To Mr.P.Sukumar, Advocate, SR.61420.

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